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THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

Written statement*/ submitted by International Alert,
a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[20 February 2001]

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*/ This written statement is issued, unedited, as received in English and French from the submitting non-governmental organization(s).

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1. The mercenary issue: The need for a new approach [1]

Discussions will take place at the 57th session of the UN Commission on Human on the renewal of the mandate of the Special Rapporteur on the use of mercenaries. International Alert believes that the UN's institutional and legal response to the mercenary problem as it manifest today is inadequate and something that urgently needs addressing. There is a growing concern for Private Security Services (PSS) - that supersede traditional mercenary activity - and their impact on human rights. The mercenary mandate is not set up to address PSS which also falls outside existing international legal instruments on mercenaries. **International Alert recommends that the Commission begin to adopt a new approach to the mercenary issue in the context of the forthcoming discussion on the mercenary mandate and seek new measures to address the broader PSS problem**.

2. New manifestations of the mercenary problem - Private security services

In recent years mercenary activity has changed radically to take on new and complex forms. The traditional mercenary, someone who fights for financial gain in armed conflicts alien to his or her own nationality, has been supplemented by the emergence of private security companies such as Executive Outcomes, Sandline International, Military Professional Resources Inc., and Defence Systems Ltd. that have begun to offer security and military services on the international market to governments, multinational corporations and humanitarian agencies. In addition to these companies, there is now a plethora of non-state private security groups which pose a common challenge to the state as the principle provider of security and the protector of human rights. Traditional mercenaries and PSS providers have been active in many armed conflicts including· Afghanistan, Angola, Armenia, Bosnia-Herzegovina, Chechnya, Columbia, Congo-Brazzaville, the Democratic Republic of Congo, Eritrea, Ethiopia, Georgia, Kashmir, Kosovo, Liberia, Papua New Guinea and Sierra Leone.

3. PSS providers and human rights

Since 1968, the UN General Assembly, the Security Council, the Economic and Social Council and the Commission on Human Rights have repeatedly condemned the use of mercenaries as an internationally unlawful act that serves to undermine the exercise of the right of peoples to self-determination and the enjoyment of human rights. This treatment of the mercenary issue as ostensibly threatening the right of peoples to self-determination has meant that the issue comes under agenda item 5 of the Commission on 'the right of peoples to self-determination and its application to peoples under colonial or alien domination of foreign occupation.' Modern forms of mercenaries and PSS, however, affect human right in a much broader sense. As non-state private entities there is a lack of accountability for PSS providers that commit human rights violations - in contrast to state security that are more adequately covered by international human rights and humanitarian law - and consequently a culture of impunity exists.

There has been a number of documented instances of PSS providers being implicated in human rights violations. These fall into three broad categories: (1) abuses committed as part of commercial security measures; (2) abuses that occur in situations of armed conflict; and (3) abuses involved in the extraction of natural resources. Specific examples include: complicity

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[1] This submission is based on a recently published paper by International Alert entitled 'The Mercenary Issue at the UN Commission on Human Rights: The Need for a New Approach', prepared by Leonard Gaultier, Garine Hovsepian, Ayesha Ramachandran, Ian Wadley and Badr Zerhdoud of the Graduate Institute of International Studies, Geneva, preface by Andrew Clapham.

with law enforcement forces in arbitrary detentions and enforced detentions; attacks on civilian populations; mass bombings; the use of indiscriminate weaponry; and links to mining companies and the exploitation of natural resources such as oil and precious minerals that can undermine the right to development. **International Alert recommends that the Commission review as a matter of urgency the relationship between PSS and the protection of human rights, and reconsider the agenda item under which the mercenary issue comes.**

4. The legal response

In 1989, the UN General Assembly adopted and opened for signature and ratification the *International Convention against the Recruitment, Use, Financing and Training of Mercenaries*. To enter into force, the Convention must be ratified by 22 States. To date 20 have done so with a further nine having signed, but not yet ratified.[1] In 1985, the OAU Convention for the Elimination of Mercenaries in Africa entered into force. However, both the International and OAU Conventions only deal with mercenaries as a threat to the territorial integrity of states and the right of peoples to self-determination and have been criticised for containing many loopholes and ambiguities. They are furthermore not applicable to most PSS activities. At the national level, some countries have laws in place to control mercenaries; even fewer countries have legislation regulating the activities of modern-day private security companies. **International Alert recommends that the UN Member States ratify the International Convention, but by introducing domestic laws that remedy the noted inadequacies, and once in force seek ways to amend or supplement existing instruments.**

5. The mandate of the Special Rapporteur on mercenaries

In 1987, the Commission appointed a Special Rapporteur on the use of mercenaries to examine the adverse effects of mercenary activity, to solicit reliable information from governments and NGOs, and to encourage the ratification of the International Convention. There is, however, officially no UN mechanism currently examining the human rights impact of new forms of mercenaries and PSS in all its emerging forms. The mandate of the Special Rapporteur remains the principal focus of the UN's response, but is not working effectively because the resolution that supports it neither includes the new manifestations of the problem highlighted here, such as private security companies, nor reflects the specific threat posed by them to the protection of human rights. **International Alert recommends that the Commission widen the remit of the Special Rapporteur on mercenaries to cover new emerging forms of mercenaries in the form of PSS.**

6. The Sixth Committee of the General Assembly

It has been suggested that the mercenary issue be taken up by the Sixth Committee of the General Assembly. Explicitly devoted to the drafting of legal documents, the Sixth Committee would, however, be an inappropriate forum in which to analyse and discuss the consequences of new forms of the problem. Sending the issue to the Sixth Committee would pre-empt a thorough examination of the issue and represent the loss of an mechanism for dialogue on how the international community should address it. It is not a lack of law that is the problem, but rather the lack of any agreed policy response. **International Alert recommends that the Commission does not consider sending the mercenary issue to the Sixth Committee of the General Assembly, but extends the mandate of the Special Rapporteur on mercenaries.**

7. A new mechanism

International Alert believes the existing mercenary mandate should in time be transformed into a new mechanism with a wider remit to address the human rights implications of PSS. This mechanism should fulfil the following functions:

- **Specialised expertise** to study the impact of PSS on human rights, to identify appropriate policy responses, and to provide an advisory role to states experiencing PSS.
- **Further definition of prohibitable mercenary activities** to build upon the expert meetings currently being convened by the Office of the UN High Commissioner for Human Rights on this matter (see below).
- **New frameworks for responsibility** to provide clarity on the legal responsibility of users of PSS and providers themselves to ensure adequate protection of human rights.
- **New frameworks for regulation and monitoring** such as a UN Regulatory Body to register and monitor the activities of accredited private security companies.
- **Seek ratification and enforcement of UN and OAU Conventions** by UN member states and act as a monitoring mechanism for their implementation.
- **Investigate and monitor private security services** and in particular compliance with existing legal instruments to consider how they might be amended and supplemented to address more adequately the human rights problems associated with PSS.
- **Dialogue with users and providers of private security services** to highlight the threat posed by PSS to the protection of human rights and recommend appropriate steps to safeguard against possible violations such as the adoption of national legislation or codes of conduct.
- **Reporting function** to disseminate information and analysis on PSS into the public realm and thus provide publicity sanctions for rogue PSS.
- **Co-ordination among UN bodies and agencies** to provide coherence to the numerous bodies and agencies in the UN dealing with discrete elements of the PSS issue.

8. UN expert meetings

In view of the inadequacies of the international legal framework for mercenaries, and as a result of resolutions in the General Assembly and Commission on Human Rights, the Office of the UN High Commissioner for Human Rights has been tasked with convening expert meetings on 'Traditional and new forms of mercenary activities as a means of violating the exercise of the right of peoples to self-determination.' The first of two meetings was held between January 29th and February 2nd 2001.The organisation of these meetings underlies the changing nature of the mercenary phenomenon and the need to seek new ways to address the issue. A report (E/CN.4/2001/18) from the meeting will be presented the 57th session of the Commission. **International Alert recommends that the Commission take action to implement the recommendations of these expert meetings.**

9. Security and Human Rights Voluntary Principles

There have been a number of instances of the use of private security companies by multinational companies in the oil and mining industries in countries such as Colombia and Nigeria leading to human rights abuses. This has promoted companies, with the encouragement of governments and NGOs, to draw up codes and conduct and guidelines on human rights to safeguard against such occurrences. During 2000, a US/UK Government initiative led to the establishment of a common set of 'Voluntary Principles on Security and Human Rights' that a number of companies in the extractive sector and NGOs have registered

their support for to help guide companies in maintaining the security of their operations whilst ensuring the protection of human rights. The agreed text was launched last December. The section (one of three) related to corporate use of private security companies makes reference to international human rights standards, international humanitarian law, and international law enforcement principles. Voluntary measures are not enforceable. However, the initiative is an important advancement in corporate responsibility for human rights. **International Alert recommends that members of the Commission consider supporting these voluntary principles and facilitating their adoption by corporations in the extractive sector**.

10. Arms trafficking

There is a strong link between PSS providers and arms trafficking. The use of, usually small, arms is integral to their activities and there have been many instances of PSS providers acting as arms brokering agents to transfer weapons into regions of conflict. It is increasingly being recognised that the availability of small arms is associated with grave violations of human rights. Few national or international controls exist to stop arms trafficking. However, the international community efforts to tackle the issue are growing and in July 2001 the UN will organise a Conference on the Illicit Trade in Small Arms and Light Weapons in all its Aspects. The conference will tackle a wide range of issues associated with illicit arms trafficking and represents an important opportunity to highlight the role played by PSS providers in the arms trade. **International Alert recommends that the UN and its Member States address the link between PSS and arms transfers during the forthcoming UN Conference on Small Arms and investigate the opportunities for integrating such activities into arms export controls.**

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[1] The following twenty states have ratified the Convention: Azerbaijan, Barbados, Belarus, Cameroon, Croatia, Cyprus, Georgia, Italy, Maldives, Mauritania, Qatar, Saudi Arabia, Senegal, Seychelles, Suriname, Togo, Turkmenistan, Ukraine, Uruguay and Uzbekistan. The following nine states have signed but have yet to ratify the Convention: Angola, Congo, Democratic Republic of the Congo, Germany, Morocco, Nigeria, Poland, Romania, and Yugoslavia.